

1 **UNITED STATES DISTRICT COURT**2 **DISTRICT OF NEVADA**

3 Woodrow June Marshall,

Case No. 2:23-cv-01394-APG-DJA

4 v. Petitioner

ORDER

5 Brian Williams, et al.,

6 Respondents

7 By a previous order (ECF No. 3), petitioner Woodrow June Marshall, was directed to pay
8 the filing fee in order to proceed with his federal habeas petition. Marshall has now paid the full
9 filing fee, so I will direct the Clerk of Court to file the petition.

11 I have reviewed the petition under Rule 4 of the Rules Governing Habeas Corpus Cases
12 Under Section 2254. While it contains cognizable grounds for habeas relief, the petition is
13 defective in several respects and presented in a manner that precludes orderly adjudication of
14 Marshall's claims. To begin with, Marshall appears to be alleging at least nine grounds for
15 relief, but the grounds are scattered throughout his 130-page submission, inconsecutively
16 numbered, and intermixed with numerous exhibits (which are also inconsecutively numbered).¹
17 Some of Marshall's claims are relatively well-written and understandable, while others are
18 difficult, if not impossible, to decipher. *See, e.g.*, ECF No. 1-1 at 8-9. I also note that Marshall's
19 petition contains two grounds identified as Ground 1 (ECF No. 1-1 at 10 and ECF No. 1-2 at 12).

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22 ¹ The Clerk docketed the submission in two parts identified as the "Petition for Writ" (ECF No.
23 1-1) and "Exhibits" (ECF No. 1-2). Because most of Marshall's habeas claims are intermixed
with the "Exhibits" rather part of the "Petition for Writ," I will direct the Clerk to file the
submission under a single docket entry.

1 In addition, I question whether Marshall has provided complete and accurate information
2 about the exhaustion of his claims. He indicates that he presented Grounds 1 through 4 to the
3 Supreme Court of Nevada in the direct appeal of his judgment of conviction. ECF No. 1-1 at 3.
4 One of the two claims he identifies as Ground 1 (ECF No. 1-1 at 10), which alleges a sentencing
5 error, is a claim that is properly presented on direct appeal. However, the other claim he
6 identifies as Ground 1 (ECF No. 1-2 at 12) and Grounds 2 through 4 (ECF No. 1-2 at 14, 18, 30)
7 are all ineffective assistance of counsel claims, which typically must be raised for the first time
8 in state post-conviction proceedings. *See Pellegrini v. State*, 34 P.3d 519, 534 (Nev. 2001)
9 (confirming that the Supreme Court of Nevada has consistently concluded that it will not
10 entertain claims of ineffective assistance of counsel on direct appeal) (citation omitted),
11 *abrogated on other grounds by Rippo v. State*, 423 P.3d 1084, 1097 n.12 (2018).

12 Due to the foregoing defects, I cannot require the respondents to respond to Marshall's
13 petition in its current form. However, because it appears Marshall may have tenable claims for
14 relief, I will give him an opportunity file an amended petition in a more manageable form. *See*
15 *Jarvis v. Nelson*, 440 F.2d 13, 14 (9th Cir. 1971) ("[A] petition for habeas corpus should not be
16 dismissed without leave to amend unless it appears that no tenable claim for relief can be pleaded
17 were such leave granted.").

18 Marshall is advised to closely follow the instructions provided with the court's form
19 petition for writ of habeas corpus, as well as the instructions on the form itself. The grounds for
20 relief must be consecutively-numbered. The form's questions regarding exhaustion information
21 must be completed for each claim. The exhibits must also be presented in sequential order.
22 They should be filed separately from the petition or included as an attachment to the petition, not
23 interspersed within the petition itself.

1 In addition, Marshall should not only correct the noted deficiencies but also include all
2 claims for relief of which he is aware. That is, the amended petition should contain all exhausted
3 claims and all unexhausted claims which Marshall believes might be a basis for granting relief
4 from the criminal conviction or sentence. An exhausted claim is one that has been fairly
5 presented to the Supreme Court of Nevada. An unexhausted claim, on the other hand, is one that
6 has not been presented to the Supreme Court of Nevada and, indeed, may not have been
7 presented to any court. If Marshall is aware of any claim and fails to inform this court as
8 provided below, the abuse of the writ rules may bar him from ever raising that claim in a federal
9 court.

10 I THEREFORE ORDER the Clerk of Court to FILE the petition for writ of habeas corpus
11 (ECF No. 1-1) and exhibits (ECF No. 1-2) as a single docket entry – i.e., without a separate entry
12 for the exhibits. The Clerk will not serve the respondents at this time, pending the amendment of
13 the petition.

14 I FURTHER ORDER the Clerk to send Marshall a noncapital Section 2254 habeas
15 petition form and a copy of the instructions for the form.

16 I FURTHER ORDER that Marshall will have until **November 3, 2023** to file with the
17 court an amended petition which corrects the deficiencies identified above.² In addition to
18 correcting the problems which I have identified, Marshall is advised to include in that amended
19 petition all additional claims for habeas corpus relief of which he is aware.

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² Marshall's initial filing may have additional deficiencies not identified in this order.

1 I FURTHER ORDER that if Marshall fails to respond to this order by the date and in the
2 manner provided above, I will conclude that he does not desire to pursue this matter, and I will
3 dismiss this case without prejudice.

4 Dated: September 28, 2023

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6 U.S. District Judge Andrew P. Gordon

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